UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Juana Arias de Rodriguez and Federico Rodriguez,

Plaintiffs,

- against -

Lenox & 132nd Food Corp. d/b/a Associated Supermarket, Pedro Diaz, and Nelson Diaz, jointly and severally,

Defendants.

Civil Action No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, Juana Arias de Rodriguez ("Ms. Arias") and Federico Rodriguez ("Mr. Rodriguez") by and through their counsel, Eisner & Dictor, P.C. and the New York Legal Assistance Group, upon personal knowledge as to themselves, and upon information and belief as to other matters, allege as follows:

NATURE OF THE ACTION

1. In this lawsuit, Plaintiffs seek to recover wages and damages for age and disability discrimination by Defendants and to recover unpaid minimum and overtime wages and related damages and penalties from Defendants.

DISCRIMINATION AND HOSTILE WORK ENVIRONMENT CLAIMS

Juana Arias de Rodriguez

2. Defendants subjected Ms. Arias to a hostile work environment and unlawfully terminated her employment because of her disability and age. Ms. Arias brings this action to recover damages caused by Defendants' violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12112 *et seq.* ("ADA"), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* ("ADEA"), the New York State Human Rights Law, N.Y. Exec.

Law §§290 *et seq.* ("NYSHRL"), and the New York City Human Rights Law, N.Y.C. Admin. Code §§ 8-101 *et seq.* ("NYCHRL").

3. From approximately February 2010 until December 2015, Ms. Arias worked as a grocery packer at Associated Supermarket's Manhattan location at 448 Lenox Avenue, New York, NY10037 (hereinafter "Lenox Associated").

4. At all times during her employment at Lenox Associated, Ms. Arias was a diligent and qualified employee.

5. During the course of her employment, the co-owner and on-site manager of Lenox Associated, Defendant Pedro Diaz, regularly ridiculed Ms. Arias with pointed remarks about her age (Ms. Arias was born in 1952) and disability (Ms. Arias has atherosclerosis and cardiovascular disease).

6. On or about September 24, 2015 Ms. Arias underwent open heart surgery and took an unpaid leave of absence in order to recuperate for approximately two and a half months.

7. Prior to returning to work, Ms. Arias provided Pedro Diaz a doctor's note indicating that she was prepared to return to her regular duties on December 14, 2015.

8. Ms. Arias returned to work on or around December 14, 2015.

9. On or around December 15, 2015, Pedro Diaz informed Ms. Arias that she was terminated and her final day of work was on or about December 31, 2015. At the time of her termination Ms. Arias was 63 years old.

10. Pedro Diaz informed Ms. Arias that the reason for her termination was a general cut in in the size of the staff. However, upon information and belief, similarly situated individuals not in Ms. Arias' protected class (nondisabled and under the age of forty (40) continue to work at Associated in largely the same capacity.

11. Ms. Arias brings this action to recover damages caused by Defendants' hostile work environment and the termination of her employment due to her age and disability, including, but not limited to, compensation for lost wages, emotional distress, punitive damages, interest, attorneys' fees and costs.

Federico Rodriguez

12. Defendants subjected Mr. Rodriguez to a hostile work environment and unlawfully terminated his employment because of his age. Mr. Rodriguez brings this action to recover damages caused by Defendants' violations of the ADEA, 29 U.S.C. § 621 *et seq.*, NYSHRL, Exec. Law §§ 290 *et seq.*, and NYCHRL, N.Y.C. Admin. Code § 8-101 *et seq.*

13. From approximately January 2009 until January 2016, Mr. Rodriguez worked as a grocery packer at Lenox Associated.

14. At all times during his employment at Lenox Associated, Mr. Rodriguez was a diligent and qualified employee.

15. During the course of his employment, the co-owner and on-site manager of Lenox Associated, Defendant Pedro Diaz, regularly made comments regarding Mr. Rodriguez's advanced age (Mr. Rodriguez was born in 1960).

16. On or around January 4, 2016, Defendant Nelson Diaz unlawfully terminated Mr. Rodriguez's employment because of his age.

17. Nelson Diaz informed Mr. Rodriguez that the reason for his termination was a general cut in in the size of the staff. However, upon information and belief, similarly situated individuals not in Mr. Rodriguez's protected class (under the age of forty (40) continue to work at Associated in largely the same capacity.

18. Mr. Rodriguez brings this action to recover damages caused by Defendants' hostile work environment and the termination of his employment due to his age, including, but not

limited to, compensation for lost wages, emotional distress, punitive damages, interest, attorneys' fees and costs.

WAGE AND HOUR VIOLATIONS

19. Plaintiffs seek to recover unpaid minimum wages, unpaid overtime, spread-of-hours premiums, and statutory penalties for notice-and-recordkeeping violations taken against Plaintiffs. Plaintiffs were hourly employees who worked at defendant Lenox & 132nd Food Corp., d/b/a Associated Supermarket (hereinafter "Associated").

20. Defendants have intentionally and willfully deprived Plaintiffs of minimum wages and overtime pay since at least on or about January 2009, in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq.

21. Defendants have intentionally and willfully deprived Plaintiffs of minimum wages and overtime pay since at least on or about January 2009, in violation of the New York Labor Law ("NYLL").

22. Defendants have willfully violated notice-and-recordkeeping requirements by failing to provide to Plaintiffs statements along with wages listing the name of employee, name of employer, address and phone number of employer, rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other, gross wages, deductions, allowances, if any, claimed as part of the minimum and net wages. Defendants have further violated the requirement that they provide, upon employee request, explanations of how wages were calculated, in violation of NYLL § 195(3).

23. Defendants have violated notice-and-recordkeeping requirements by failing to provide Plaintiffs with wage notices as required on February 1 of every year in violation of NYLL § 195(1).

JURISDICTION AND VENUE

24. Jurisdiction is proper since this Court has original federal question jurisdiction under 28 U.S.C. §1331 as this case is brought under the FLSA, 29 U.S.C. § 201, *et seq.*, ADEA, 29 U.S.C. § 621 *et seq.*, and ADA, 42 U.S.C. § 12112 *et seq.* This Court has supplemental jurisdiction over the NYLL, NYSHRL and NYCHRL claims, as they are so related that they form part of the same case or controversy under Article III of the United States Constitution.

25. This Court has subject matter jurisdiction over Plaintiffs' claims arising under state and city law pursuant to 28 U.S.C. § 1367(a) because Plaintiffs' state and city law claims are so related to Plaintiffs' federal law claims as to form part of the same case or controversy.

26. This Court has personal jurisdiction over Defendant Associated pursuant to CPLR 301 because it is located in New York.

27. This Court has personal jurisdiction over Defendants Pedro Diaz and Nelson Diaz pursuant to CPLR 301 and/or 302 because they reside in and regularly do business in New York and because they own, use and/or possess real property within New York.

28. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c). Among other things, Associated, Pedro Diaz, and Nelson Diaz are found or transact business in this District, and the acts and/or omissions giving rise to the claims herein alleged took place in this District.

PARTIES

DEFENDANTS

29. Defendant Lenox & 132nd Food Corp. d/b/a Associated Supermarket ("Associated") is a domestic business corporation organized under the laws of New York, with its

principal office at 448 Lenox Avenue, New York, New York 10037.

30. Defendants Pedro Diaz and Nelson Diaz are owners, managers, and proprietors of Associated, who actively participated and continue to participate in the day-to-day operations of Associated.

31. Defendants Pedro Diaz and Nelson Diaz acted willfully and intentionally and are employers pursuant to the FLSA, 29 U.S.C. § 203(d) and the regulations promulgated thereunder, 29 C.F.R. § 791.2, as well as NYLL § 190 and the regulations promulgated thereunder, and are jointly and severally liable with Associated.

32. Upon information and belief, Defendants Pedro Diaz and Nelson Diaz are brothers.

33. Defendants Pedro Diaz and Nelson Diaz exercised control over the terms and conditions of the Plaintiffs' employment in that they have and have had the power to: (i) hire and fire employees, (ii) determine and approve rates and methods of pay, (iii) determine and approve work schedules, (iv) supervise and control the work of employees, including the Plaintiffs, and (v) otherwise affect the quality of the employees' employment.

34. Prior to the termination of Ms. Arias and Mr. Rodriguez's employment, Associated Supermarket was an "employer" within the meaning of the ADEA, the ADA, NYSHRL, and NYCHRL.

35. Pedro Diaz and Nelson Diaz own and operate Associated and are citizens of New York. Beginning in approximately January 2009 and continuing until Ms. Arias and Mr. Rodriguez's termination, Pedro Diaz and Nelson Diaz had the power to and did hire and fire employees, supervise employees' schedules, and maintain employment records. Pedro Diaz and Nelson Diaz are "employers" within the meaning of the NYSHRL and the NYCHRL.

PLAINTIFFS

Juana Arias de Rodriguez

36. Plaintiff Juana Arias de Rodriguez worked at Lenox Associated from on or around February 9, 2010 through about December 31, 2015.

37. Ms. Arias was approximately sixty-three (63) years old at the time of termination of her employment. On or around September 2015, Ms. Arias learned that she had atherosclerosis and cardiovascular disease, conditions which necessitated open heart surgery and an unpaid leave of absence of approximately two months.

38. Until the termination of her employment at Lenox Associated, Ms. Arias was an "employee" within the meaning of the ADEA, the ADA, the NYSHRL, and the NYCHRL.

39. Immediately preceding and at the time of her termination, Ms. Arias had a "disability" – namely, atherosclerosis cardiovascular disease – within the meaning of the ADA, the NYSHRL, and the NYCHRL.

Federico Rodriguez

40. Plaintiff Federico Rodriguez worked at Lenox Associated from approximately January 2009 through about January 4, 2015.

41. Mr. Rodriguez was about fifty-five (55) years old at the time of termination of his employment.

42. Until the termination of his employment at Lenox Associated, Mr. Rodriguez was an "employee" within the meaning of the ADEA, the NYSHRL, and the NYCHRL.

PLAINTIFFS HAVE FULFILLED THE ADMINISTRATIVE REQUIREMENTS OF THEIR ADEA, ADA, NYSHRL, AND NYCHRL CLAIMS

43. On August 5, 2016, Ms. Arias filed a discrimination charge with the Equal Employment Opportunity Commission ("EEOC"), which was cross-filed with the New York State

Division of Human Rights. A copy of that charge is attached as Exhibit A.

44. On November 14, 2016, Ms. Arias filed an amended charge with the EEOC. A copy of that charge is attached as Exhibit B.

45. The EEOC issued Ms. Arias a "Right-to-Sue" letter dated February 7, 2017, a copy of which is attached as Exhibit C, and sent a copy to Defendant Lenox & 132nd Food Corp.

46. On October 17, 2016, Mr. Rodriguez filed a discrimination charge with the Equal Employment Opportunity Commission ("EEOC"), which was cross-filed with the New York State Division of Human Rights. A copy of that charge is attached as Exhibit D.

47. On January 31, 2017, Mr. Rodriguez requested a "Right-to-Sue" letter from the EEOC. A copy of Mr. Rodriguez's request, dated January 31, 2017, is attached as Exhibit E.

48. Sixty days have elapsed since Mr. Rodriguez filed his charge at EEOC, pursuant to 29 U.S.C. 626(d), and he is entitled to proceed in federal court.

49. Contemporaneously with filing this Complaint, Ms. Arias and Mr. Rodriguez are serving a copy of it upon the New York City Commission on Human Rights and the Office of the Corporation Counsel of the City of New York, thereby satisfying the requirements of Section 8-502(c) of the New York City Administrative Code.

FACTUAL BACKGROUND

Juana Arias de Rodriguez

50. Ms. Arias began working at Lenox Associated as a grocery packer on or about February 9, 2010.

51. At the start of her employment, Pedro Diaz informed Ms. Arias that she would be taking over the duties of an elderly grocery packer because Pedro Diaz had determined that the former packer no longer "needed" to work at Associated and could get by with government assistance such as Social Security.

52. Pedro Diaz served as an on-site manager and supervised Ms. Arias' work.

53. Ms. Arias performed a number of duties for Associated. Although her main responsibility was to pack purchased items in paper and plastic bags after they had been charged by the cashier, Ms. Arias often served as a delivery person for Associated. Ms. Arias transported purchased goods to customers' cars, as well as to customers' homes. Further, Ms. Arias regularly served as a greeter and theft prevention agent. In particular, when security staff members were absent or took time off, Ms. Arias would be asked to monitor the entrance in their stead.

54. From February 9, 2010 to approximately October 2014, Ms. Arias' compensation consisted solely of customer tips ranging from $25 to $40 per day. During this period Ms. Arias did not receive wages from Associated and Associated did not provide her with pay statements.

55. On or about October 2014, Associated began paying Ms. Arias regular wages in addition to tips. At this time, Associated also began issuing wage statements every week.

56. Associated knowingly produced wage statements that did not reflect the actual hours worked by Ms. Arias during the workweek.

57. The weekly wage statements that Associated produced indicated that Ms. Arias worked part-time or about 25 hours a week at a rate consistent with the state minimum wage when in fact, from February 2010 until her termination in December 2015, Ms. Arias generally worked over fifty (50) hours a week.

58. Throughout the course of her employment, Ms. Arias worked six days a week, taking Mondays off. She worked on Sundays from 10:00 am to around 8:00 or 9:00 pm and took approximately one hour for lunch. Tuesday through Friday Ms. Arias worked from 3:00 pm to approximately 11:00 pm, and on Saturdays she worked from 2:00 pm to 11:00 pm without breaking for lunch or dinner.

59. From October 2014 to her termination in December 2015, Ms. Arias was paid weekly in cash and was told she was being paid at a rate of $5 per hour. She received about $150 - $200 in cash per week in addition to the tips she had previously retained from customers.

60. On September 24, 2015, Ms. Arias underwent open heart surgery to clear a blocked artery, the result of atherosclerosis and cardiovascular disease. Ms. Arias took an unpaid leave of absence in order to recuperate for approximately two and a half months.

61. Prior to returning to work, she provided Pedro Diaz a doctor's note indicating that she would be able to return to her regular duties on December 14, 2015. Ms. Arias returned to work on December 14, 2015 and worked that day without incident.

62. The following day, on December 15, 2015, Pedro Diaz terminated Ms. Arias.

63. Pedro Diaz told Ms. Arias that the reason for her termination was a reduction in staff. Upon information and belief, in addition to Ms. Arias and Mr. Rodriguez, three other individuals worked as packers/delivery staff at Lenox Associated. Those individuals continue to work at the Lenox Associated in only slightly modified capacities and continue to perform the duties of grocery packers. Upon information and belief, Associated continues to contract workers under the age of forty (40) to pack and deliver customers' groceries.

64. Although she was told her termination was effective immediately, Ms. Arias asked Pedro Diaz to let her work until the end of the month.

65. Ms. Arias' final day of employment was on or about December 31, 2015.

66. Throughout Ms. Arias' employment, Pedro Diaz regularly taunted her because of her advanced age. Pedro Diaz generally targeted Ms. Arias in front of customers and other employees.

67. On numerous occasions between approximately 2012 until her termination in December 2015, he told her that she was too old to work ("eres muy vieja"). In the weeks leading up to Ms. Arias' heart surgery and leave, Pedro Diaz frequently told Ms. Arias in front of co-workers and customers that she was a "wreck" ("desbaratada") and that she was "good for nothing" and "useless" ("Tu no sirves para nada") as a result of her condition.

68. These comments continued after her termination in the weeks leading up to her final day of employment. During this period, Pedro Diaz repeated his comments about Ms. Arias' age and disability, suggesting that her termination was in fact a result of her age and disability.

69. For example, Ms. Arias pleaded to retain her position. He told her that she did not "need" to work because in her old age she would be eligible for social security and government assistance.

Federico Rodriguez

70. Mr. Rodriguez was hired at Lenox Associated as a grocery packer/delivery worker on or about February 2009.

71. As a grocery packer/delivery worker, Mr. Rodriguez's work consisted of making deliveries and assisting cashiers. He also briefly served as an assistant to the manager on duty.

72. From February 2009 to approximately April 2011, his compensation consisted solely of customer tips ranging from $25 to $40 per day. During this time, Mr. Rodriguez did not receive wages from Associated and Associated did not provide him with wage statements.

73. On or about April 2011, Associated began paying Mr. Rodriguez wages in addition to tips. At this time, Associated also began issuing wage statements every week.

74. However, Associated knowingly produced wage statements that did not reflect the actual hours worked by Mr. Rodriguez during the workweek.

75. The weekly wage statements that Associated produced indicated that Mr. Rodriguez worked exactly forty (40) hours a week at a rate consistent with the state minimum wage when in fact, from February 2009 until his termination in January 2016, Mr. Rodriguez generally worked over sixty-five (65) to seventy (70) hours per week.

76. Throughout the course of his employment, Mr. Rodriguez worked seven days a week. From Monday to Friday, Mr. Rodriguez worked from around 3:00 pm to 11:00 pm. On Saturdays, he worked from 2:00 pm to around 11:00 pm. On Sundays, he worked from approximately 10:00 am to 9:00 pm, occasionally arriving as early as 7:00 am to assist in the opening of the store.

77. The end of his shifts generally coincided with the closing of Lenox Associated for the night. In this capacity, he would assist the manager on duty and security personnel in closing the store.

78. From April 2011 to his termination in January 2016, Mr. Rodriguez was paid about $170 - $200 in cash per week in addition to the tips he had previously retained from customers.

79. On January 4, 2016, Defendant Nelson Diaz, part-owner and on-site manager of Associated terminated Mr. Rodriguez's employment effective immediately. Nelson Diaz asked Mr. Rodriguez to sign a form affirming the reason he was terminated was because Associated had eliminated his position.

80. Nelson Diaz told Mr. Rodriguez that the reason for his termination was a reduction in staff. Upon information and belief, in addition to Ms. Arias and Mr. Rodriguez, three other individuals worked as packers/delivery staff at Lenox Associated at the time of Mr.

Rodriguez and Ms. Arias' termination. Those individuals continue to work at the Lenox Associated in only slightly modified capacities and continue to perform the duties of grocery packers. Upon information and belief, Associated continues to contract workers under the age of forty (40) to pack and deliver customers' groceries.

81. Throughout Mr. Rodriguez's employment, Nelson Diaz and Pedro Diaz regularly ridiculed Mr. Rodriguez because of his advanced age. These comments were generally made in front of customers and other employees.

82. Specifically, Nelson Diaz called Mr. Rodriguez "useless" ("tu no sirves para nada"), "an old man who is finished," ("un viejo acabado"), and "an old man without energy" ("un viejo explotado"). Nelson Diaz often suggested that Mr. Rodriguez should leave Associated and find other work because he was old and no longer of value to Associated.

FACTUAL ALLEGATIONS CONCERNING PLAINTIFFS' WAGE AND HOUR CLAIMS

83. Plaintiffs bring their first and second claims for relief under the FLSA, 29 U.S.C. § 201 *et seq.*

84. Upon information and belief, Defendants are an employer engaged in commerce as defined in the FLSA, 29 U.S.C. § 203(s).

85. Based on information provided by Plaintiffs, employees of the Defendants are an enterprise whose gross volume of sales made, or business done, is in excess of $500,000. Specifically, upon information and belief, Defendants operate three supermarkets throughout the Greater New York City area. In addition to Lenox Associated, Defendants own and operate supermarkets in the Bronx (hereinafter "Bronx Associated"), and Brooklyn (hereinafter "Brooklyn Associated"). As such, based on Plaintiffs' personal knowledge of Defendants' business, as well as upon information and belief, Defendants are an enterprise engaged in

commerce as defined by 29 U.S.C. § 203(s).

86. Upon information and belief, as well as first-hand knowledge of Plaintiffs, employees of Defendants, Defendants regularly purchase goods and materials in interstate commerce, and Plaintiffs regularly handle such goods. Specifically, upon information and belief and Plaintiffs' first-hand knowledge, Defendants regularly purchase products for sale from manufacturers located outside of New York state. These products are brought to the various supermarket locations by truck and unloaded by employees.

87. Throughout Plaintiffs' employment with Defendants, Defendants willfully failed to pay Plaintiffs at the minimum wage rate for all hours worked, in violation of the FLSA, 29 U.S.C. § 206(a).

88. Throughout Plaintiffs' employment with Defendants, Plaintiffs worked in excess of forty (40) hours per week, but Defendants willfully failed to pay Plaintiffs at the required overtime rate of one and one-half their regular rate for all hours in excess of forty (40) each week, in violation of the FLSA.

89. Plaintiffs bring their third, fourth, fifth, sixth, and seventh claims for relief under NYLL §§ 650 *et seq.* and NYLL § 195 and NYLL § 215(1).

90. Defendants knew that the nonpayment of minimum wages and overtime would economically injure Plaintiffs and violate federal and New York State laws.

91. Plaintiffs regularly worked in excess of forty (40) hours per workweek.

92. Defendants unlawfully failed to pay Plaintiffs in accordance with minimum wage requirements of federal and state law, in violation of NYLL § 652.

93. Defendants unlawfully failed to pay Plaintiffs at the overtime rate as provided by NYLL for all hours in excess of forty (40) in a workweek, in violation of NYLL §§ 650 *et seq.* and regulations promulgated thereunder.

94. Defendants unlawfully failed to pay Plaintiffs the spread-of-hours premium for days in which they worked in excess of ten (10) hours as required under N.Y. Comp. Code R. & Regs., Title 12, § 137-1.7 pursuant to NYLL §§ 650 *et seq.*

95. Defendants violated NYLL § 195(3) by failing to furnish Plaintiffs with a statement with every payment of wages, listing gross wages, deductions and net wages. In addition, Defendants failed to furnish an explanation of how such wages were computed when Plaintiffs requested such an explanation.

96. Defendants violated NYLL § 195(1) by failing to provide Plaintiffs with a yearly notice which includes rate of pay, including straight time and overtime; how and when Plaintiffs are paid; the official name of Plaintiffs' employer and any other names used for business; the address and telephone number of the employer's main office or principal location; and allowances taken as part of the minimum wage.

97. Defendants violated NYLL § 193 through their willful and intentional taking of deductions from Plaintiffs' wages by requiring them to purchase physical materials necessary for Defendants' business to function.

COUNT I

Failure to Pay Minimum Wage in Violation of the Fair Labor Standards Act
(29 U.S.C. §§ 201 *et seq.*)
(Brought by Juana Arias de Rodriguez and Federico Rodriguez)
(Against all Defendants)

98. Plaintiffs, repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

99. At all times relevant, each Defendant has been, and/or continues to be, an "employer" engaged in interstate "commerce" and/or in the production of "goods" for "commerce," within the meaning of FLSA, 29 U.S.C. § 203.

100. At all times relevant, each Defendant has employed Plaintiffs "employees" within the meaning of FLSA, 29 U.S.C. § 203.

101. Defendants were required to pay Plaintiffs at a rate not less than the minimum wage rate under the FLSA for all hours worked.

102. Upon information and belief, Defendants knowingly failed to pay Plaintiffs the required minimum wage under the FLSA for each hour worked.

103. Plaintiffs seek damages for their unpaid compensation, liquidated damages as provided by the FLSA, attorneys' fees and costs, along with such other relief as this Court deems just and proper.

COUNT II

Failure to Pay Overtime in Violation of the Fair Labor Standards Act
(29 U.S.C. §§ 201 *et seq.)*
(Brought by Juana Arias de Rodriguez and Federico Rodriguez)
(Against all Defendants)

104. Plaintiffs repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

105. Throughout the period covered by the applicable statute of limitations and upon information and belief, Plaintiffs regularly worked in excess of forty (40) hours per workweek.

106. At all times relevant and upon information and belief, Defendants have repeatedly and willfully failed to pay Plaintiffs in accordance with the overtime provisions of the FLSA for work performed in excess of forty (40) hours per workweek.

107. Plaintiffs seek and are entitled to recover damages for their unpaid overtime compensation, liquidated damages as provided by the FLSA, attorneys' fees and costs along with such other relief as this Court deems just and proper.

COUNT III

Failure to Pay Minimum Wage in Violation of New York State Labor Law (NYLL Article 19 §§ 650 *et seq.* and N.Y. Comp. Code R. & Regs. Title 12, § 142-2.1) (Brought by Juana Arias de Rodriguez and Federico Rodriguez) (Against all Defendants)

108. Plaintiffs repeat, reallege and incorporate each and every preceding paragraph as if set forth herein.

109. Throughout the period covered by the applicable statute of limitations and upon information and belief, Defendants knowingly paid Plaintiffs less than the minimum wage as required by NYLL and the supporting regulations of the New York State Department of Labor.

110. Plaintiffs seek to recover their unpaid compensation, liquidated damages pursuant to NYLL, Article 6, § 198, attorneys' fees, costs, pre- and post-judgment interest along with such other relief as this Court deems just and proper.

COUNT IV

Failure to Pay Overtime in Violation of New York State Labor Law (NYLL Article 19 §§ 650 *et seq.* and N.Y. Comp. Code R. & Regs. Title 12, § 142-2.2) (Brought by Juana Arias de Rodriguez and Federico Rodriguez) (Against all Defendants)

111. Plaintiffs repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

112. Throughout the period covered by the applicable statute of limitations and upon information and belief, Defendants willfully and repeatedly failed to pay Plaintiffs at the overtime rate for hours worked in excess of forty (40) hours per workweek as required by NYLL.

113. Plaintiffs seek and are entitled to recover their respective unpaid compensation, damages pursuant to NYLL, Article 6 § 198, attorneys' fees, costs, pre- and post-judgment interest along with such other relief as this Court deems just and proper.

COUNT V

Failure to Pay Spread-of-Hours Premium in Violation of New York State Labor Law
(NYLL Article 19 §§ 650 *et seq.* and N.Y. Comp. Code R. & Regs. Title 12, § 142-2.4)
(Brought by Juana Arias de Rodriguez and Federico Rodriguez)
(Against all Defendants)

114. Plaintiffs repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

115. Throughout the period covered by the applicable statute of limitations and upon information and belief, Plaintiffs regularly worked in excess of ten (10) hours in a workday.

116. Upon information and belief, Defendants willfully and intentionally failed to pay Plaintiffs one hour's pay at the New York minimum wage rate on days in which they worked in excess of ten (10) hours as required under N.Y. Comp. Code R. & Regs., Title 12, § 137-1.7

117. Plaintiffs seek and are entitled to recover their respective unpaid compensation, damages pursuant to NYLL, Article 6, § 198, attorneys' fees, costs, pre- and-post judgment interest along with such other relief as this Court deems just and proper.

COUNT VI

Failure to Comply with Notice-and-Recordkeeping Requirements in Violation of New York State Labor Law
(NYLL § 195(3) and N.Y. Comp. Code R. & Regs. Title 12, § 142-2.6)
(Brought by Juana Arias de Rodriguez and Federico Rodriguez)
(Against all Defendants)

118. Plaintiffs repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

119. Defendants have failed to provide Plaintiffs with wage statements or explanations of how their wages were calculated in violation of NYLL § 195(3).

120. Plaintiffs have been damaged in an amount as yet determined, plus liquidated damages.

COUNT VII

Failure to Comply with Notice-and-Recordkeeping Requirements in Violation of New York State Labor Law
(NYLL § 195(1) and N.Y. Comp. Code R. & Regs. Title 12, § 142-2.6)
(Brought by Juana Arias de Rodriguez and Federico Rodriguez)
(Against all Defendants)

121. Plaintiffs repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

122. Defendants have failed to provide Plaintiffs with wage notices as required on February 1 of every year in violation of NYLL § 195(1).

123. Plaintiffs have been damaged in an amount as yet determined, plus liquidated damages.

COUNT VIII

Discrimination Based on Disability in Violation of the Americans with Disabilities Act of 1990
(42 U.S.C. § 12112(a))
(Brought by Juana Arias de Rodriguez)
(Against Defendant 132nd Food Corp. ("Associated"))

124. Ms. Arias repeats, realleges and incorporates each and every preceding paragraph as if set forth fully herein.

125. At all times during her employment at Associated, Ms. Arias was fully qualified for, and met or exceeded the performance requirements and expectations for, all aspects of her position.

126. Defendant Associated terminated Ms. Arias' employment on December 15, 2015, the day after Ms. Arias returned from medical leave, retained other non-disabled employees in the same or largely similar positions, and made a number of derogatory statements with regards to her disability.

127. Ms. Arias' disability was a motivating or substantial reason for the termination of Ms. Arias' employment at Associated.

128. Defendants violated the ADA by, among other things, discriminatorily terminating Ms. Arias' employment because of her disability.

129. As a direct and proximate consequence of Defendants' unlawful conduct, Ms. Arias suffered damages, including past and future lost wages, emotional distress, and the costs of bringing this action.

130. Defendants' unlawful conduct constitutes a malicious and/or recklessly indifferent violation of Ms. Arias' rights under the ADA and therefore entitles Ms. Arias to an award of punitive damages.

COUNT IX

Discrimination Based on Disability in Violation of
New York State Human Rights Law
(N.Y. Exec. L. §§ 296(1)(a), 296(6))
(Brought by Juana Arias de Rodriguez)
(Against all Defendants)

131. Ms. Arias repeats, realleges and incorporates each and every preceding paragraph as if set forth fully herein.

132. At all times during her employment at Associated, Ms. Arias was fully qualified for, and met or exceeded the performance requirements and expectations for, all aspects of her position.

133. At all relevant times, Defendant Pedro Diaz had the authority to make personnel decisions at Associated, including deciding whether to fire employees.

134. Defendants terminated Ms. Arias' employment on December 15, 2015, the day after Ms. Arias returned from medical leave, retained other non-disabled employees in the

same or largely similar positions, and made a number of derogatory statements with regard to her disability.

135. Ms. Arias' disability was a motivating or substantial reason for Defendants' termination of Ms. Arias' employment.

136. Defendants violated the NYSHRL by, among other things, discriminatorily terminating Ms. Arias' employment because of her disability.

137. Alternatively, Pedro Diaz is liable for aiding and abetting Associated's discriminatory termination of Ms. Arias' employment.

138. As a direct and proximate consequence of Defendants' unlawful conduct, Ms. Arias suffered damages, including past and future lost wages, and emotional distress.

COUNT X

Discrimination Based on Disability in Violation of New York City Human Rights Law (N.Y.C. Admin. Code §§ 8-107(1)(a), 8-107(6)) (Brought by Juana Arias de Rodriguez) (Against all Defendants)

139. Ms. Arias repeats, realleges and incorporates each and every preceding paragraph as if set forth fully herein.

140. At all times during her employment at Associated, Ms. Arias was fully qualified for, and met or exceeded the performance requirements and expectations for, all aspects of her position.

141. At all relevant times, Defendant Pedro Diaz had the authority to make personnel decisions at Associated, including deciding whether to fire employees.

142. Defendants terminated Ms. Arias' employment on December 15, 2015, the day after Ms. Arias returned from medical leave, retained other non-disabled employees in the

same or largely similar positions, and made a number of derogatory statements with regards to her disability.

143. Ms. Arias' disability was a motivating or substantial reason for Defendants' termination of Ms. Arias' employment.

144. Defendants violated the NYCHRL by, among other things, discriminatorily terminating Ms. Arias' employment because of her disability.

145. Alternatively, Pedro Diaz is liable for aiding and abetting Associated's discriminatory termination of Ms. Arias' employment.

146. As a direct and proximate consequence of Defendants' unlawful conduct, Ms. Arias' suffered damages, including past and future lost wages, emotional distress, and the costs of bringing this action.

147. Defendants' unlawful conduct constitutes a malicious and/or recklessly indifferent violation of Ms. Arias' rights under the NYCHRL and therefore entitles Ms. Arias to an award of punitive damages.

COUNT XI

Hostile Work Environment Based on Disability in Violation of the Americans with Disabilities Act of 1990
(42 U.S.C. § 12112(a))
(Brought by Juana Arias de Rodriguez)
(Against Defendant 132nd Food Corp. ("Associated"))

148. Ms. Arias repeats, realleges and incorporates each and every preceding paragraph as if set forth fully herein.

149. Pedro Diaz's frequent and direct comments regarding Ms. Arias' disability were both severe and/or pervasive.

150. Pedro Diaz's treatment of Ms. Arias created a hostile work environment.

151. Pedro Diaz is an "employer" capable of taking tangible employment actions against Ms. Arias and Associated is vicariously liable for his action.

152. Ms. Arias' disability was a motivating or substantial reason for the termination of Ms. Arias' employment at Associated.

153. Defendants violated the ADA by, among other things, establishing a hostile work environment because of Ms. Arias' disability.

154. As a direct and proximate consequence of Defendants' unlawful conduct, Ms. Arias suffered damages, including past and future lost wages, emotional distress, and the costs of bringing this action.

155. Defendants' unlawful conduct constitutes a malicious and/or recklessly indifferent violation of Ms. Arias' rights under the ADA and therefore entitles Ms. Arias to an award of punitive damages.

COUNT XII

Hostile Work Environment Based on Disability in Violation of New York State Human Rights Law (N.Y. Exec. L. §§ 296(1)(a), 296(6)) (Brought by Juana Arias de Rodriguez) (Against all Defendants)

156. Ms. Arias repeats, realleges and incorporates each and every preceding paragraph as if set forth fully herein.

157. Pedro Diaz's frequent and direct comments regarding Ms. Arias' disability established a hostile work environment under NYSCHRL.

158. Pedro Diaz is an "employer" capable of taking tangible employment actions against Ms. Arias and Associated is vicariously liable for his action.

159. Ms. Arias' disability was a motivating or substantial reason for the termination of Ms. Arias' employment at Associated.

160. Defendants violated the NYSHRL by, among other things, establishing a hostile work environment because of Ms. Arias' disability.

161. As a direct and proximate consequence of Defendants' unlawful conduct, Ms. Arias suffered damages, including past and future lost wages, emotional distress, and the costs of bringing this action.

COUNT XIII
Hostile Work Environment Based on Disability in violation of New York City Human Rights Law (N.Y.C. Admin. Code §§ 8-107(1)(a), 8-107(6)) (Brought by Juana Arias de Rodriguez) (Against all Defendants)

162. Ms. Arias repeats, realleges and incorporates each and every preceding paragraph as if set forth fully herein.

163. Pedro Diaz's frequent and direct comments regarding Ms. Arias' disability established a hostile work environment under NYCHRL.

164. Pedro Diaz exercised managerial or supervisory responsibility, imputing liability on Associated for his action.

165. Ms. Arias' disability was a motivating or substantial reason for the termination of Ms. Arias' employment at Associated.

166. Defendants violated the NYCHRL by, among other things, establishing a hostile work environment because of Ms. Arias' disability.

167. As a direct and proximate consequence of Defendants' unlawful conduct, Ms. Arias suffered damages, including past and future lost wages, emotional distress, and the costs of bringing this action.

168. Defendants' unlawful conduct constitutes a malicious and/or recklessly indifferent violation of Ms. Arias' rights under the NYCHRL and therefore entitles Ms. Arias to

an award of punitive damages.

COUNT XIV

Discrimination Based on Age in Violation of
Age Discrimination in Employment Act of 1967
(29 U.S.C. § 621)
(Brought by Juana Arias de Rodriguez and Federico Rodriguez)
(Against Defendant Lenox 132nd Food Corp. ("Associated"))

169. Ms. Arias and Mr. Rodriguez repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

170. At all times during their employment at Associated, Ms. Arias and Mr. Rodriguez were fully qualified for, and met or exceeded the performance requirements and expectations for, all aspects of their positions.

171. At all relevant times, Defendants Pedro Diaz and Nelson Diaz had the authority to make personnel decisions at Associated, including deciding whether to fire employees.

172. Associated terminated Ms. Arias' employment on December 15, 2015, retaining other employees under the age of 40 in the same or largely similar positions, and made a number of derogatory statements with regard to her age.

173. Associated terminated Mr. Rodriguez's employment on January 4, 2016, retaining other employees under the age of 40 in the same or largely similar positions, and made a number of derogatory statements with regard to his age.

174. Ms. Arias' age was the reason for the termination of Ms. Arias' employment at Associated.

175. Mr. Rodriguez's age was the reason for the termination of Mr. Rodriguez's employment at Associated.

176. Defendants violated the ADEA by, among other things, discriminatorily terminating Ms. Arias' and Mr. Rodriguez's employment because of their age.

177. As a direct and proximate consequence of Defendants' unlawful conduct, Ms. Arias and Mr. Rodriguez suffered damages, including past and future lost wages, and the costs of bringing this action.

178. Defendants' unlawful conduct constitutes a willful violation of Ms. Arias and Mr. Rodriguez's rights under the ADEA and therefore entitles Ms. Arias and Mr. Rodriguez to awards of liquidated damages.

COUNT XV

Discrimination Based on Age in Violation of New York State Human Rights Law (N.Y. Exec. L. § 296(1)(a), 296(6)) (Brought by Juana Arias de Rodriguez and Federico Rodriguez) (Against all Defendants)

179. Ms. Arias and Mr. Rodriguez repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

180. At all times during their employment at Associated, Ms. Arias and Mr. Rodriguez were fully qualified for, and met or exceeded the performance requirements and expectations for, all aspects of their positions.

181. At all relevant times, Defendants Pedro Diaz and Nelson Diaz had the authority to make personnel decisions at Associated, including deciding whether to fire employees.

182. Associated terminated Ms. Arias' employment on December 15, 2015, retaining other employees under the age of 40 in the same or largely similar positions, and made a number of derogatory statements with regard to her age.

183. Associated terminated Mr. Rodriguez's employment on January 4, 2016, retaining other employees under the age of 40 in the same or largely similar positions, and made a number of derogatory statements with regard to his age.

184. Ms. Arias' age was the reason for the termination of Ms. Arias' employment at Associated.

185. Mr. Rodriguez's age was the reason for the termination of Mr. Rodriguez's employment at Associated.

186. Defendants violated the NYSHRL by, among other things, discriminatorily terminating Ms. Arias' and Mr. Rodriguez's employment because of their age.

187. Alternatively, Pedro Diaz and Nelson Diaz are liable for aiding and abetting Defendants' discriminatory termination of Ms. Arias and Mr. Rodriguez's employment.

188. As a direct and proximate consequence of Defendants' unlawful conduct, Ms. Arias and Mr. Rodriguez suffered damages, including past and future lost wages, emotional distress, and the costs of bringing this action.

COUNT XVI

Discrimination Based on Age in Violation of
New York City Human Rights Law
(N.Y.C. Admin. Code § 8-107(1)(a), 8-107(6))
(Brought by Juana Arias de Rodriguez and Federico Rodriguez)
(Against all Defendants)

189. Ms. Arias and Mr. Rodriguez repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

190. At all times during their employment at Associated, Ms. Arias and Mr. Rodriguez were fully qualified for, and met or exceeded the performance requirements and expectations for, all aspects of their positions.

191. At all relevant times, Defendants Pedro Diaz and Nelson Diaz had the authority to make personnel decisions at Associated, including deciding whether to fire employees.

192. Associated terminated Ms. Arias' employment on December 15, 2015, retaining other employees under the age of 40 in the same or largely similar positions, and made a

number of derogatory statements with regard to her age.

193. Associated terminated Mr. Rodriguez's employment on January 4, 2016, retaining other employees under the age of 40 in the same or largely similar positions, and made a number of derogatory statements with regard to his age.

194. Ms. Arias' age was a motivating or substantial reason for the termination of Ms. Arias' employment at Associated.

195. Mr. Rodriguez's age was a motivating or substantial reason for the termination of Mr. Rodriguez's employment at Associated.

196. Defendants violated the NYCHRL by, among other things, discriminatorily terminating Ms. Arias' and Mr. Rodriguez's employment because of their age.

197. As a direct and proximate consequence of Defendants' unlawful conduct, Ms. Arias and Mr. Rodriguez suffered damages, including past and future lost wages, emotional distress, and the costs of bringing this action.

198. Alternatively, Pedro Diaz and Nelson Diaz are liable for aiding and abetting Defendants' discriminatory termination of Ms. Arias and Mr. Rodriguez's employment.

199. Defendants' unlawful conduct constitutes a malicious and/or recklessly indifferent violation of Ms. Arias and Mr. Rodriguez's rights under the NYCHRL and therefore entitles Ms. Arias and Mr. Rodriguez to awards of punitive damages.

COUNT XVII

Hostile Work Environment Based on Age in Violation of
Age Discrimination in Employment Act of 1967
(29 U.S.C. § 621)
(Brought by Juana Arias de Rodriguez and Federico Rodriguez)
(Against Defendant 132nd Food Corp. d/b/a Associated Supermarket)

200. Ms. Arias and Mr. Rodriguez repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

201. Pedro Diaz and Nelson Diaz's frequent and direct comments regarding Ms. Arias and Mr. Rodriguez's ages, respectively, were both severe and/or pervasive.

202. Pedro Diaz and Nelson Diaz's s treatment of Ms. Arias and Mr. Rodriguez created a hostile work environment.

203. Pedro Diaz is an "employer" capable of taking tangible employment actions against Ms. Arias and Associated is vicariously liable for his action.

204. Nelson Diaz is an "employer" capable of taking tangible employment actions against Mr. Rodriguez and Associated is vicariously liable for his action.

205. Ms. Arias' age was the reason for the termination of Ms. Arias' employment at Associated.

206. Mr. Rodriguez's age was the reason for the termination of Mr. Rodriguez's employment at Associated.

207. Defendants violated the ADEA by, among other things, establishing a hostile work environment because of Ms. Arias and Mr. Rodriguez's age.

208. As a direct and proximate consequence of Defendants' unlawful conduct, Ms. Arias and Mr. Rodriguez suffered damages, including past and future lost wages, and the costs of bringing this action.

209. Defendants' unlawful conduct constitutes a willful violation of Ms. Arias and Mr. Rodriguez's rights under the ADEA and therefore entitles Ms. Arias and Mr. Rodriguez to awards of liquidated damages.

COUNT XIX

Hostile Work Environment Based on Age in Violation of New York State Human Rights Law (N.Y. Exec. L. § 296(1)(a), 296(6)) (Brought by Juana Arias de Rodriguez and Federico Rodriguez) (Against all Defendants)

210. Ms. Arias and Mr. Rodriguez repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

211. Pedro Diaz and Nelson Diaz's frequent and direct comments regarding Ms. Arias and Mr. Rodriguez's ages, respectively, were both severe and/or pervasive.

212. Pedro Diaz and Nelson Diaz's s treatment of Ms. Arias and Mr. Rodriguez created a hostile work environment.

213. Pedro Diaz is an "employer" capable of taking tangible employment actions against Ms. Arias and Associated is vicariously liable for his action.

214. Ms. Arias' age was the reason for the termination of Ms. Arias' employment at Associated.

215. Mr. Rodriguez's age was the reason for the termination of Mr. Rodriguez's employment at Associated.

216. Defendants violated the ADEA by, among other things, establishing a hostile work environment because of Ms. Arias and Mr. Rodriguez's age.

217. As a direct and proximate consequence of Defendants' unlawful conduct, Ms. Arias and Mr. Rodriguez suffered damages, including past and future lost wages, emotional distress, and the costs of bringing this action.

COUNT XX

Hostile Work Based on Age in Violation of
New York City Human Rights Law
(N.Y.C. Admin. Code § 8-107(1)(a), 8-107(6))
(Brought by Juana Arias de Rodriguez and Federico Rodriguez)
(Against all Defendants)

218. Ms. Arias and Mr. Rodriguez repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

219. Pedro Diaz and Nelson Diaz's frequent and direct comments regarding Ms. Arias and Mr. Rodriguez's age established a hostile work environment under NYCHRL.

220. Pedro Diaz exercised managerial or supervisory responsibility, imputing liability on Associated for his action.

221. Nelson Diaz exercised managerial or supervisory responsibility, imputing liability on Associated for his action.

222. Ms. Arias' age was a motivating or substantial reason for the termination of Ms. Arias' employment at Associated.

223. Ms. Rodriguez's age was a motivating or substantial reason for the termination of Ms. Rodriguez's employment at Associated.

224. Defendants violated the NYCHRL by, among other things, establishing a hostile work environment because of Ms. Arias and Mr. Rodriguez's age.

225. As a direct and proximate consequence of Defendants' unlawful conduct, Ms. Arias and Mr. Rodriguez suffered damages, including past and future lost wages, emotional distress, and the costs of bringing this action.

226. Defendants' unlawful conduct constitutes a malicious and/or recklessly indifferent violation of Ms. Arias and Mr. Rodriguez's rights under the NYCHRL and therefore entitles Ms. Arias and Mr. Rodriguez to awards of punitive damages.

RELIEF SOUGHT

WHEREFORE, Plaintiffs, individually on behalf of themselves and collectively, on behalf of themselves, request relief as follows:

A. An order declaring that the Defendants violated the FLSA;

B. An order declaring that the Defendants' violations of the FLSA were willful;

C. An order declaring that the Defendants violated the NYLL;

D. An award of overtime compensation under the FLSA and NYLL;

E. An award of minimum wage compensation under the FLSA and NYLL;

F. An award of spread-of-hours payments due under the NYLL;

G. An award of liquidated damages pursuant to the FLSA;

H. An award of liquidated damages for violations of NYLL;

I. An award for reimbursement of unlawful kickbacks under the FLSA;

J. An award for reimbursement of unlawful deductions under NYLL;

K. An order declaring Defendants violated the ADA;

L. An order declaring Defendants violated the ADEA;

M. An order declaring Defendants violated the NYSHRL;

N. An order declaring the Defendants violated NYCHRL;

O. An award for compensatory damages, including past and future lost wages, and emotional distress under the ADA, ADEA, NYSHRL, and NYCHRL;

P. An order declaring that the Defendants' violations of the ADA, ADEA and NYCHRL were willful and malicious and/or reckless;

Q. An award of liquidated damages pursuant to the ADEA

R. An award of punitive damages under the ADA and NYCHRL;

S. All penalties available under the applicable laws;

T. An award of all costs of this action, and reasonable attorneys' fees and disbursements incurred in connection with this action pursuant to 29 U.S.C. § 216, NYLL § 663, 42 U.S.C. § 12205, and all other applicable statutes;

U. Interest as provided by law; and

V. Such other relief as this Court deems just and proper.

JURY TRIAL

Plaintiffs demand a jury trial for all causes of action and claims for which they have a right to a jury trial.

Dated: New York, New York
April 4, 2017

Respectfully submitted,

EISNER & DICTOR, P.C.
Attorneys for Plaintiffs

By: ______________________
Thomas J. Lamadrid
39 Broadway, Suite 1540
New York, NY 10006
Tel: (212) 473-8700
thomas@eisnerdictor.com

- and -

NEW YORK LEGAL ASSISTANCE GROUP
Attorneys for Plaintiffs

By: ______________________
Nina Martinez
7 Hanover Square, 18th Floor
New York, NY 10004
nmartinez@nylag.org
Tel: (212) 613-5034
nmartinez@nylag.org